

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|-------------------------|---|----------------------|
| MELISSA BURNS, |) | |
| |) | |
| Plaintiff, |) | 8:06CV59 - 8:06CV225 |
| |) | |
| v. |) | |
| |) | |
| WEST CORPORATION, |) | ORDER |
| a Delaware corporation, |) | |
| |) | |
| Defendant. |) | |

Defendant has moved to consolidate various of these 167 cases into designated groups, to create a master docket and master files for each group, and for a litigation plan. Plaintiffs have opposed parts of the motion. I have reviewed the parties' positions in accordance with principles set forth in the Manual for Complex Litigation, Fourth Edition, and Fed. R. Civ. P. 42. There are common issues of fact and law which will make more efficient the ultimate resolution of these cases by grouping them and consolidating the various grouped cases for trial. I conclude the defendant's proposals are sound and should be adopted in principle. I shall therefore grant the motion and direct counsel to confer before holding a conference to finalize a specific litigation plan.

IT THEREFORE HEREBY IS ORDERED:

The motions for consolidation filed by the defendant (filing 11 in 8:06CV059) are granted in principle, as follows:

1. These cases shall be divided into the groups identified in Exhibit A of the defendant's motion, that is, fifteen groups of cases and three individual cases.

2. All cases shall remain in this court at least through the pretrial preparation stages. Resolution of whether some

cases should be transferred to the Western District of Oklahoma for trial in that district is reserved for later consideration.

3. The clerk shall establish a Master File titled "West Corporation FLSA Litigation." The Master File shall bear its own case file number, separate from any of the individual cases. The parties shall file all pleadings and documents applicable to ALL 167 cases only in the Master File, NOT in the individual case files. Each such filing shall include in the caption the words, "MASTER FILE -- Applicable to All Cases."

4. The clerk shall also establish Group Files for the fifteen groups, as follows: Each Group File shall be titled by the first-named plaintiff in that group, the case file number of that group and a Roman numeral designation. In addition, the caption shall include the case file numbers of each case included in the group, and also a designation of the name(s) of the plaintiff(s) to which that pleading or document applies, all as shown on the examples attached to this order. Pleadings and documents filed which apply to ANY of the individual cases listed in a group, but not applicable to all 167 cases, shall be filed in the appropriate group file and NOT in any individual file. With the exception of the three individual cases addressed in the next paragraph, no further filings shall be made in the individual plaintiffs' case files except as directed herein, without further order of the court. With the opening of the Group Files the clerk shall insert in the docket report of each individual case file the following: "Consolidated into West Corporation FLSA Litigation: All further filings are in Master File, found at 8:06cv384 or in Group File I, found at 8:06cv387." For pleadings, discovery and motion purposes, each Group File shall generally be regarded as if it were one case with several plaintiffs.

5. The three individual cases of Deborah Dehart, 8:06cv85; Barbara Kosloski, 8:06cv72; and Lisa Spencer, 8:06cv117, shall not be made part of any group; they are, however, included in the overall group of 167 cases, so pleadings and documents filed in the Master File will also apply to these cases. Pleadings and documents applicable to one or all of these three cases, but not applicable to the overall group of 167 cases, shall be filed in the individual case file(s) for the case(s) to which they apply. Pleadings and documents applicable to one or all of these three cases and to one or more Group Files shall be filed in the appropriate Group File(s) AND the appropriate individual case file(s). The clerk shall include a prominent notice on the docket report of each of these three cases, as follows:

"Consolidated into West Corporation FLSA Litigation: Check Master File found at 8:06cv384."

6. Plaintiffs are given sixty days from this date to complete their discovery on the issue of the defendant's willfulness in taking the actions it did respecting plaintiffs' classifications. In this regard and to expedite this discovery, responses to all written discovery requests shall be served not later than fifteen days following service of the requests, unless otherwise agreed among counsel. Any defense motion for summary judgment or partial summary judgment on the subject of the defendant's willfulness shall be filed no earlier than July 31, 2006 and no later than August 25, 2006. If no such motion is filed, the issue of willfulness will be reserved for trial.

7. Counsel shall confer with respect to discovery and other matters to be completed to prepare these cases for meaningful settlement discussions, and shall, on or before **June 26, 2006**, propose to the court their joint suggestions for an appropriate progression order to accommodate such discussions.

Counsel shall immediately advise the parties that the court expects them to mediate their dispute if they have not already done so, and may order them to participate in settlement discussions, in the presence of the judge if appropriate. Counsel shall notify the undersigned magistrate judge by joint or separate letters by **June 26, 2006**, addressing the following for each Group File and the three individual files:

- a. That they have advised their clients of the court's expectations respecting mediation;
- b. That they have hired a mediator and the name of the mediator hired;
- c. The date of their scheduled mediation;
- d. Their joint, or if necessary, separate views on whether the progression of the case should be stayed pending the outcome of their mediation;
- e. If no mediator has been hired by that time, counsel's estimate of when a mediator can be hired and a mediation held;
- f. If a mediation previously has been held, the identity of the mediator, the date of the

mediation, and their views as to whether another mediation at this time might be successful in resolving the dispute;

- g. Whether the parties object to mediation and if so, what the objections are; and
- h. If the parties have not discussed mediation, what settlement efforts have been undertaken and what actions are planned for the future, together with the timing of such anticipated actions.

Failure to provide the required report will result in postponement of the planning conference until the report has been received.

Counsel are reminded that if parties do not have the funds immediately available to pay a mediator's fees, the court's Plan for Administration of the Federal Practice Fund and the Mediation Plan (both available at www.ned.uscourts.gov) make the Federal Practice Fund available to advance such fees; if the case ends with any payment of money to that party, the Federal Practice Fund must be reimbursed.

8. Planning Conference: A conference pursuant to Fed. R. Civ. P. 16 shall be held in chambers with the undersigned magistrate judge on July 13, 2006 at 10:00 a.m. Central Standard Time for the purpose of reviewing the preparation of each group file and the three individual files to date and the scheduling of each to trial. Prior to the conference counsel for the parties shall have completed each of the following, for each Group File and the three individual files:

- a. Disclosed the names, addresses, and affiliations with any party of all non-expert witnesses;
- b. Disclosed at least the names and addresses of all expert witnesses expected to testify for that party at trial;
- c. Completed a conference with opposing counsel concerning outstanding discovery disputes as required by NECivR 7.1(i);

- d. Discussed with opposing counsel plans for completing the depositions of expert witnesses and other remaining discovery and the filing of motions for summary judgment;
- e. Provided their report(s) on the status of mediation and other settlement efforts as required in paragraph 7, above; and
- f. Discussed with opposing counsel any other matters which may influence the setting of each for trial, including the order in which group files and the three individual files should be tried. (In this respect counsel should consider which Group File, if tried first, would likely effect the most fruitful settlement discussions in the other files.)

9. **Mandatory Disclosures** described in Fed. R. Civ. P. 26(a)(1) shall be served by June 26, 2006.

10. The **filing of disclosures** under Fed. R. Civ. P. 26(a)(1), and (2), as well as the filing of discovery documents, depositions, and disclosures required by this order shall be governed by NECivR 26.1. The disclosures required by Fed. R. Civ. P. 26(a)(3) shall be filed when served. **Note: Disclosures that are filed should be redacted so no personal information (e.g., home addresses, phone numbers, Social Security numbers, etc.) is made part of the public record.**

11. **Withholding Documents from Disclosure or Discovery.** If any document is withheld from production or disclosure on the grounds of privilege or work product, the producing party shall disclose the following information about each such document withheld: a description of the document withheld with as much specificity as is practicable without disclosing its contents, including (a) the general nature of the document; (b) the identity and position of its author; (c) the date it was written; (d) the identity and position of its addressee; (e) the identities and positions of all persons who were given or have received copies of it and the dates copies were received by them; (f) the document's present location and the identity and position of its custodian; and (g) the specific reason or reasons why it has been withheld from production or disclosure.

12. **Limits on Discovery.** Each party is limited to serving 25 interrogatories on any other party.

13. **Adding Parties; Amending Pleadings.** Any motion to amend pleadings and/or add parties shall be filed not later than 30 days from the date of this order.

14. **Motions to alter dates.** All requests for changes of deadlines established by this order shall be directed to the magistrate judge by appropriate motion.

15. It is now anticipated that the eighteen trials will commence in late October, 2006.

DATED this 25th day of May, 2006.

BY THE COURT

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| |) | 8:06CV387 |
| |) | |
| |) | I - BAKER GROUP FILE |
| |) | |
| IN RE: |) | This Pleading Applies to: |
| |) | ____8:06CV94 (Baker) |
| WEST CORPORATION FLSA |) | ____8:06CV67 (Cramer) |
| LITIGATION |) | ____8:06CV99 (Fay) |
| |) | ____8:06CV109 (Flynn) |
| |) | ____8:06CV89 (Freeman) |
| |) | ____8:06CV98 (Gasbarro) |
| |) | ____8:06CV84 (Graves) |
| |) | ____8:06CV119 (Kiec) |
| |) | ____8:06CV102 (Lamb) |
| |) | ____8:06CV100 (Lindsey) |
| |) | ____8:06CV75 (Richardson) |
| |) | ____8:06CV121 (Thiem) |
| |) | ____All |
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FOR THE DISTRICT OF NEBRASKA

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| |) | 8:06CV388 |
| |) | |
| |) | II - BILDERBACK GROUP FILE |
| |) | |
| IN RE: |) | |
| |) | This Pleading Applies to: |
| |) | _____ 8:06CV87 (Bilderback) |
| WEST CORPORATION FLSA |) | _____ 8:06CV88 (Boyle) |
| LITIGATION |) | _____ 8:06CV69 (Castro) |
| |) | _____ 8:06CV114 (Childers) |
| |) | _____ 8:06CV115 (Cistrunk) |
| |) | _____ 8:06CV77 (Coffelt) |
| |) | _____ 8:06CV78 (Inclan) |
| |) | _____ 8:06CV91 (Matlock) |
| |) | _____ 8:06CV71 (Myer) |
| |) | _____ 8:06CV107 (Rhoades) |
| |) | _____ 8:06CV125 (Rudnick) |
| |) | _____ 8:06CV92 (Ryan) |
| |) | _____ 8:06CV110 (Tuckson) |
| |) | _____ 8:06CV106 (Vidlak) |
| |) | _____ 8:06CV86 (Wilson) |
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| |) | 8:06CV389 |
| |) | |
| |) | III - BURNS GROUP FILE |
| |) | |
| IN RE: |) | |
| |) | This Pleading Applies to: |
| WEST CORPORATION FLSA |) | _____ 8:06CV59 (Burns) |
| LITIGATION |) | _____ 8:06CV65 (Calkins) |
| |) | _____ 8:06CV80 (Del Mundo) |
| |) | _____ 8:06CV60 (Ellison) |
| |) | _____ 8:06CV61 (Keitzmann) |
| |) | _____ 8:06CV62 (Kowalke) |
| |) | _____ 8:06CV126 (Marsh) |
| |) | _____ 8:06CV63 (Peters) |
| |) | _____ 8:06CV93 (Radzewicz) |
| |) | _____ 8:06CV66 (Sather) |
| |) | _____ 8:06CV120 (Smith) |
| |) | _____ 8:06CV124 (Vasta) |
| _____ |) | _____ All |

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| |) | 8:06CV390 |
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| |) | IV - CLEMENS GROUP FILE |
| |) | |
| IN RE: |) | This Pleading Applies to: |
| |) | ____ 8:06CV123 (Clemens) |
| WEST CORPORATION FLSA |) | ____ 8:06CV64 (D'Agosta) |
| LITIGATION |) | ____ 8:06CV68 (Garcia) |
| |) | ____ 8:06CV105 (Holt) |
| |) | ____ 8:06CV108 (Kyhn) |
| |) | ____ 8:06CV103 (McNamara) |
| |) | ____ 8:06CV112 (Parnell) |
| |) | ____ 8:06CV111 (Steiger) |
| |) | ____ 8:06CV116 (Swanson) |
| |) | ____ 8:06CV96 (Watson) |
| |) | ____ All |
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| |) | 8:06CV391 |
| IN RE: |) | |
| |) | V - BENTLEY GROUP FILE |
| WEST CORPORATION FLSA |) | |
| LITIGATION |) | This Pleading Applies to: |
| |) | _____ 8:06CV95 (Bentley) |
| |) | _____ 8:06CV118 (Guida) |
| |) | _____ 8:06CV73 (Petersen) |
| |) | _____ 8:06CV82 (Tompkins) |
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| |) | 8:06CV392 |
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| |) | VI - ATWOOD GROUP FILE |
| |) | |
| IN RE: |) | This Pleading Applies to: |
| |) | _____ 8:06CV83 (Atwood) |
| WEST CORPORATION FLSA |) | _____ 8:06CV74 (Bizzarri) |
| LITIGATION |) | _____ 8:06CV76 (Douglas) |
| |) | _____ 8:06CV79 (Johnson) |
| |) | _____ 8:06CV90 (Kabella) |
| |) | _____ 8:06CV113 (McLaughlin) |
| |) | _____ 8:06CV70 (Mulkey) |
| |) | _____ 8:06CV122 (Nikonov) |
| |) | _____ 8:06CV97 (Ramsey) |
| |) | _____ 8:06CV101 (Weaver) |
| |) | _____ 8:06CV104 (Young) |
| _____ |) | _____ All |

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| |) | 8:06CV393 |
| IN RE: |) | |
| |) | VII - ELIX GROUP FILE |
| WEST CORPORATION FLSA |) | |
| LITIGATION |) | This Pleading Applies to: |
| |) | _____ 8:06CV172 (Elix) |
| |) | _____ 8:06CV218 (Graves) |
| |) | _____ 8:06CV150 (Harrison) |
| |) | _____ 8:06CV135 (Scobey) |
| |) | _____ 8:06CV200 (Talley) |
| _____ |) | _____ All |

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| |) | 8:06CV394 |
| |) | |
| |) | VIII - DAVIS GROUP FILE |
| |) | |
| |) | This Pleading Applies to: |
| IN RE: |) | _____ 8:06CV207 (Davis) |
| |) | _____ 8:06CV138 (Dorrell) |
| WEST CORPORATION FLSA |) | _____ 8:06CV188 (Elmaghrabi) |
| LITIGATION |) | _____ 8:06CV127 (Hendershott) |
| |) | _____ 8:06CV152 (Hooks) |
| |) | _____ 8:06CV224 (Key) |
| |) | _____ 8:06CV201 (Kotev) |
| |) | _____ 8:06CV160 (Loudermilk) |
| |) | _____ 8:06CV158 (Minor) |
| |) | _____ 8:06CV143 (Moore, Jr.) |
| |) | _____ 8:06CV189 (Nathan, Jr.) |
| |) | _____ 8:06CV167 (Nichols) |
| |) | _____ 8:06CV156 (O'Neal) |
| |) | _____ 8:06CV139 (Phillips) |
| |) | _____ 8:06CV147 (Thompson) |
| _____ |) | _____ All |

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| |) | 8:06CV395 |
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| |) | IX - BRUNER GROUP FILE |
| |) | |
| |) | This Pleading Applies to: |
| IN RE: |) | _____ 8:06CV179 (Bruner) |
| |) | _____ 8:06CV213 (Carter) |
| WEST CORPORATION FLSA |) | _____ 8:06CV161 (Dansby) |
| LITIGATION |) | _____ 8:06CV176 (Leon) |
| |) | _____ 8:06CV222 (Martin) |
| |) | _____ 8:06CV219 (McAlvain) |
| |) | _____ 8:06CV196 (McElroy) |
| |) | _____ 8:06CV155 (Ortiz) |
| |) | _____ 8:06CV163 (Ryan) |
| |) | _____ 8:06CV212 (Streetman) |
| |) | _____ 8:06CV225 (Walker) |
| _____ |) | _____ All |

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| |) | 8:06CV396 |
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| |) | X - COMFORT GROUP FILE |
| |) | |
| |) | This Pleading Applies to: |
| IN RE: |) | _____ 8:06CV173 (Comfort) |
| |) | _____ 8:06CV134 (Epps) |
| WEST CORPORATION FLSA |) | _____ 8:06CV162 (Farr) |
| LITIGATION |) | _____ 8:06CV177 (Gales) |
| |) | _____ 8:06CV169 (Hamilton) |
| |) | _____ 8:06CV171 (Leisering) |
| |) | _____ 8:06CV195 (Mackey) |
| |) | _____ 8:06CV206 (Mengwasser) |
| |) | _____ 8:06CV215 (O'Neal) |
| |) | _____ 8:06CV129 (Portwood) |
| |) | _____ 8:06CV168 (Rowley) |
| |) | _____ 8:06CV211 (Ward) |
| |) | _____ 8:06CV205 (Welle) |
| |) | _____ 8:06CV159 (Woolridge) |
| _____ |) | _____ All |

IN THE UNITED STATES DISTRICT COURT
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| |) | 8:06CV397 |
| |) | |
| |) | XI - K. ALLEN GROUP FILE |
| |) | |
| |) | This Pleading Applies to: |
| IN RE: |) | ___ 8:06CV146 (Allen, Kimberly) |
| |) | ___ 8:06CV164 (Galloway) |
| WEST CORPORATION FLSA |) | ___ 8:06CV175 (Gottshall) |
| LITIGATION |) | ___ 8:06CV170 (Howell) |
| |) | ___ 8:06CV166 (Krischel) |
| |) | ___ 8:06CV203 (McLean) |
| |) | ___ 8:06CV133 (Mollman) |
| |) | ___ 8:06CV131 (Schwarz) |
| |) | ___ 8:06CV209 (Stewart) |
| |) | ___ 8:06CV142 (Whitaker) |
| |) | ___ All |

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| |) | 8:06CV398 |
| |) | |
| |) | XII - BEASLEY GROUP FILE |
| |) | |
| |) | This Pleading Applies to: |
| IN RE: |) | _____ 8:06CV181 (Beasley) |
| |) | _____ 8:06CV165 (DeWolfe) |
| WEST CORPORATION FLSA |) | _____ 8:06CV148 (Elix) |
| LITIGATION |) | _____ 8:06CV193 (Jones) |
| |) | _____ 8:06CV197 (Kieffer) |
| |) | _____ 8:06CV214 (Langley) |
| |) | _____ 8:06CV136 (Lukens-Clagg) |
| |) | _____ 8:06CV141 (Mariconda) |
| |) | _____ 8:06CV180 (O'Connor) |
| |) | _____ 8:06CV137 (Silcott) |
| |) | _____ 8:06CV220 (Smith) |
| |) | _____ 8:06CV157 (St. Pierre) |
| |) | _____ 8:06CV187 (Stanford) |
| |) | _____ 8:06CV221 (Taylor) |
| |) | _____ 8:06CV144 (Truitt) |
| _____ |) | _____ All |

IN THE UNITED STATES DISTRICT COURT
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| |) | 8:06CV399 |
| IN RE: |) | |
| |) | XIII - RILEY GROUP FILE |
| WEST CORPORATION FLSA |) | |
| LITIGATION |) | This Pleading Applies to: |
| |) | _____ 8:06CV185 (Riley) |
| |) | _____ 8:06CV151 (Wise) |
| _____ |) | _____ All |

IN THE UNITED STATES DISTRICT COURT
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| |) | 8:06CV400 |
| |) | |
| |) | XIV - ALFORD GROUP FILE |
| |) | |
| |) | This Pleading Applies to: |
| IN RE: |) | _____ 8:06CV183 (Alford) |
| |) | _____ 8:06CV199 (Anderson) |
| WEST CORPORATION FLSA |) | _____ 8:06CV223 (Brungardt) |
| LITIGATION |) | _____ 8:06CV140 (Carlson) |
| |) | _____ 8:06CV153 (Carr) |
| |) | _____ 8:06CV149 (Diaz) |
| |) | _____ 8:06CV186 (Foutz) |
| |) | _____ 8:06CV210 (Garlitz) |
| |) | _____ 8:06CV192 (Gill Jr.) |
| |) | _____ 8:06CV182 (Harris) |
| |) | _____ 8:06CV128 (Hendershott) |
| |) | _____ 8:06CV208 (Hinton Barr) |
| |) | _____ 8:06CV145 (Jones) |
| |) | _____ 8:06CV154 (Mosier) |
| |) | _____ 8:06CV130 (Palmer) |
| |) | _____ 8:06CV132 (Parks) |
| |) | _____ 8:06CV178 (Peratta) |
| |) | _____ All |

IN THE UNITED STATES DISTRICT COURT
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| |) | 8:06CV401 |
| |) | |
| |) | XV - J. ALLEN GROUP FILE |
| |) | |
| |) | This Pleading Applies to: |
| IN RE: |) | _____ 8:06CV184 (Allen, Jeanne) |
| |) | _____ 8:06CV216 (Anglin) |
| WEST CORPORATION FLSA |) | _____ 8:06CV190 (Brown) |
| LITIGATION |) | _____ 8:06CV202 (Burns) |
| |) | _____ 8:06CV198 (Cheesman) |
| |) | _____ 8:06CV217 (McCarver) |
| |) | _____ 8:06CV174 (Myers) |
| |) | _____ 8:06CV194 (Parker) |
| |) | _____ 8:06CV204 (Rawlins) |
| |) | _____ 8:06CV191 (Terry) |
| _____ |) | _____ All |

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:

WEST CORPORATION FLSA
LITIGATION

8:06CV384

MASTER FILE